Title: Protecting the market from the individuals who have been convicted overseas IA No: BIS INSS004 Lead department or agency: **The Insolvency Service** Other departments or agencies: **Department for Business Innovation and Skills**	**Impact Assessment (IA)** **Date:** 16/04/14 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** Muhunthan Vaithianathar 020 7637 6515

Summary: Intervention and Options

RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
-£0.93m	£0	£0	No	N/A

What is the problem under consideration? Why is government intervention necessary?

Under the current provisions of section 2 of the Company Directors Disqualification Act 1986 (CDDA), the Secretary of State is not allowed to make an application for an individual to be disqualified in cases where that individual has been convicted overseas – even if it is the case that the individual has re-located to the UK; presenting a strong possibility that he or she intends to resume their activities over here, which, in turn, represents a risk to the UK business market. Such an individual cannot be prevented from incorporating a UK company and being appointed as a director thereof. Action may only be taken if and when that individual causes harm.

What are the policy objectives and the intended effects?

To protect the market from those who have been convicted overseas of an offence in relation to a company by allowing the Secretary of State to seek their disqualification from acting in the management of a company in the UK.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Do Nothing: Although it is currently possible to cite the conviction as part of the evidence of misconduct (however, the court would not be bound to take it into account), any action taken against such an individual would have to be "after the event". This would be after an individual has been appointed a director of a UK company and caused possible harm/losses to UK businesses and individuals.
Option 1: Include overseas convictions and conduct explicitly as a factor to be taken into consideration by the court when determining unfitness within the proposed new iteration of Section 9 and Schedule 1 CDDA. As with the 'do nothing' option, such action will be, necessarily "after the event" and will not prevent the individual from causing harm in the first place – even though it might be anticipated.
Option 2: **(Preferred Option in conjunction with Option 1)**: Allow the Secretary of State to bring civil disqualification proceedings against any director who has been convicted overseas of a serious offence in connection with the promotion, formation or management of a company – preventive actions possible. In addition, overseas convictions and conduct would be included as a factor to be taken into account by the court when determining unfitness within the proposed new Schedule 1 of the CDDA.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** April 2020

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** No	**Medium** No	**Large** No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: Jenny Willott Date: 12.06.14

Summary: Analysis & Evidence — Policy Option 1

Description: Include overseas conviction and conduct explicitly as a factor to be taken into consideration by the court when determining unfitness within the proposed new iteration of Section 9 and Schedule 1 of the CDDA 86.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -1.32	High: -0.54	Best Estimate: -0.93

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.5	1	N/A	**0.5**
High	1.3		N/A	**1.3**
Best Estimate	0.9		N/A	**0.9**

Description and scale of key monetised costs by 'main affected groups'

Transitional costs to the Insolvency Service from producing the guidance, and to judges from reading it, are considered to be **negligible.**
Familiarisation costs to insolvency practitioners (IPs) are considered to be **£507k to £1.01m**, based on 1,372 IPs spending 1 to 2 hours reading the new guidance at an hourly rate of £375. Familiarisation costs to lawyers are expected to be in the range of **£31k to £307k**, based on 210-375 lawyers spending 1 to 2 hours reading the guidance at an hourly rate between £146 and £409.
Any familiarisation costs to business are indirect and therefore out of scope of OITO.

Other key non-monetised costs by 'main affected groups'

No other wider costs are expected.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	N/A	Unknown	**Unknown**
High	0		Unknown	**Unknown**
Best Estimate	0		Unknown	**Unknown**

Description and scale of key monetised benefits by 'main affected groups'

No monetised benefits have been identified.

Other key non-monetised benefits by 'main affected groups'

This option is not likely to fully address the problem, because disqualification proceedings might be pursued only "after the event" and will not assist in preventing the individual from causing harm in the first place – even though it might be widely anticipated that this is his or her intention in coming to the UK.
Nevertheless, increased clarity and better understanding of factors to be taken into consideration by the court when determining unfitness might be considered as a benefit in itself and listing conduct in relation to overseas companies specifically will help signal this intention. That is by specifically mentioning overseas conduct, directors will be aware that miscreant behaviour overseas will not be overlooked if they set up a company in the UK and it subsequently runs into problems and enters insolvency.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The full extent of the benefits is unknown, but it is expected that this option will be less effective than Option 2 in achieving them.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	**Benefits:** Unknown	**Net:** 0	No	N/A

Summary: Analysis & Evidence

Policy Option 2

Description: Allow the Secretary of State to bring civil disqualification proceedings against any director who has been convicted overseas of a serious offence in connection with the promotion, formation or management of a company.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -1.32	High: -0.54	Best Estimate: -0.93

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	0.5	1	0	**0.5**
High	1.3		0	**1.3**
Best Estimate	0.9		0	**0.9**

Description and scale of key monetised costs by 'main affected groups'

Transitional costs to the Insolvency Service (IS) from producing the guidance and to judges from reading it are considered to be **negligible.**

Familiarisation costs to IPs are considered to be **£507k to £1.01m**, based on 1,372 IPs spending 1 to 2 hours reading the new guidance at an hourly rate of £375. Familiarisation costs to lawyers are expected to be in the range of **£31k to £307k**, based on 210 to 375 lawyers spending 1 to 2 hours reading the guidance at an hourly rate between £146 and £409.

Any familiarisation costs to business are indirect and therefore out of scope of OITO.

Other key non-monetised costs by 'main affected groups'

There will be no additional costs to the businesses and directors. If it was decided to take disqualification action following an overseas conviction, there would be a cost to the Insolvency Service in bringing such an action. However there is no data available on how much this would cost.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	0	N/A	0	**0**
High	0		0	**0**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised in this impact assessment.

Other key non-monetised benefits by 'main affected groups'

There will also be non monetised benefits to creditors and the wider economy arising from the disqualification of a convicted director. These are associated with the prevention from future wrongdoing by an individual convicted overseas, who may wish to import serious misconduct into the UK. This wrongdoing could be both civil and criminal.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The main risk relates to obtaining information about an individual with a foreign corporate conviction as there is no central register containing such information. Intelligence would be needed to obtain this information, be it from other Government regulators, media reports, other businesses or private individuals. However we do not expect there to be many disqualification applications and this measure is preventative, to stop those with serious overseas convictions for company offences from coming to the UK to carry out the same or similar behaviour.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**In scope of OITO?**	**Measure qualifies as**
Costs: 0	**Benefits:** 0	**Net:** 0	No	N/A

Evidence Base (for summary sheets)

Introduction

The CDDA and Disqualification of Company Directors

The Company Directors Disqualification Act 1986 (CDDA) aims to maintain the integrity of the business environment. Those who become directors of limited companies should:

- Carry out their duties with responsibility; and
- Exercise adequate skill and care with proper regard to the interests of the company's creditors and employees.

The majority of directors do this effectively, but the CDDA is a powerful tool against those who abuse the privilege of limited liability. The CDDA applies not just to persons who are formally appointed as directors but to those who carry out the functions of directors.

If there is any unfit conduct in an insolvent company, then the liquidator, administrative receiver, administrator or official receiver has a duty to send the Secretary of State for Business, Innovation & Skills a report on the conduct of all directors who were in office in the last 3 years of the company's trading.

The Insolvency Service, on behalf of the Secretary of State has to decide whether it is in the public interest to seek a disqualification order against a director.

The proceedings are brought by The Insolvency Service on behalf of the Secretary of State for Business, Innovation & Skills or, usually in compulsory winding-up cases, by the official receiver at the direction of the Secretary of State. The matter is heard, and decided by the court, unless the Secretary of State accepts a disqualification undertaking from a director. An undertaking has the same legal effect as a court order, but negates the need to go to court.

The minimum period of disqualification is 2 years and the maximum 15 years.

If a company director is disqualified (by court order or by giving an undertaking), unless they have court permission, that person is disqualified for the period stated in the order or undertaking from:

- Being a director of a company;
- Acting as receiver of a company's property;
- Directly or indirectly being concerned or taking part in the promotion, formation or management of a company; or
- Being a member of or being concerned or taking part in the promotion, formation or management of a limited liability partnership.
- Acting as an insolvency practitioner (IP).

Problem under consideration:

1. Under section 2 of the CDDA, the court may make a disqualification order against a person who is convicted of an indictable offence (whether indictable or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company's property or with his being an administrative receiver of a company.
2. The disqualification order may be made:
   - by the court before which the person was convicted of the offence – as an ancillary order made upon sentencing, or
   - by any civil court having jurisdiction to wind up the company in relation to which the offence was committed - on the application of the Secretary of State.
3. What section 2 does not allow is for the Secretary of State to make an application for an individual to be disqualified in cases where that individual has been convicted overseas – even if it is the case that the individual has re-located to the UK; presenting a strong possibility that he or she intends to resume their activities over here, which, in turn, represents a risk to the UK market. This could be

based on intelligence received from any source, including other Governments, private individuals, media reports, etc., even though there is no central register containing such information.

4. Under the current legislation, such an individual cannot be prevented from incorporating a UK company and being appointed as a director thereof. Action may only be taken if and when that individual causes harm.
5. This situation is against the spirit of the CDDA, which is protective in function. Whereas the market can be protected from future corporate activity by an individual convicted of an indictable offence in the UK there is no such protection afforded against an individual who may wish to import serious misconduct into the UK.

Rationale for intervention

6. There is little data available, anecdotal or otherwise on the extent of this problem. From informal enquiries of both Companies House staff and Insolvency Service staff, there were very few recollections of enquiries regarding overseas directors and them setting up operations in the UK. However this is more of a preventative measure and wishing to close a current lacuna in the law. By allowing for disqualification action to be taken against an individual with a serious overseas conviction in relation to a company, this measure intends to protect the UK market from the potential actions of that individual by restricting his involvement in the UK market.
7. Information asymmetries mean that directors have more information (including information on their background and potential misconduct patterns) than shareholders and creditors. And high transaction costs (for example from trying to conduct detailed background checks) can prevent them from protecting themselves and the company from potential misconduct, for example, if such checks only contained details of UK companies and directors, not actions carried out overseas.
8. It is plausible that directors convicted overseas of a serious offence in connection with the promotion, formation or management of a company may wish to replicate this pattern in the UK.
9. Currently, if a director is convicted of a criminal offence in relation to a company in the UK, such as fraudulent trading (under the Companies Act), Theft Act offences, Fraud Act offences, accounting records offences, contravening a disqualification order, acting as a director whilst bankrupt, misconduct in the course of a winding up, false statements, other Insolvency Act offences, etc., the court can make a disqualification order following the sentencing or the Insolvency Service (acting on behalf of the SoS) can request that the court make an order as a result of the criminal conviction. If a similar offence is committed overseas, then it isn't possible to seek such a disqualification order. The relevant director is free to come to the UK and set up a company and perhaps undertake the same type of behaviour over here.
10. Government action is therefore needed to prevent convicted directors from importing serious misconduct into the UK by disqualifying them, hence enabling optimal levels of risk-taking and investment in the market.
11. Policy Objective
12. To protect the market from those who have been convicted overseas of a serious offence in relation to a company by allowing the Secretary of State to seek their disqualification from acting in the management of a company in the UK, by amending legislation to enable the Secretary of State to apply for the disqualification of an individual who has been convicted overseas of an indictable offence (whether indictable or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company's property or with his being an administrative receiver of a company.

Description of options considered (including do nothing)

Option 1: Do Nothing (Least Favoured Option)

13. Although the legislation does not currently allow the Secretary of State to seek the disqualification of an individual, solely upon the basis of an overseas conviction, where the conduct leading to that conviction is germane to the conduct alleged where an application for disqualification is made under Sections 6 or 8 of the CDDA (for example where an individual had been convicted abroad for, say a land banking scam, and had come to the UK, set up a company to undertake a similar activity and that company was now the subject of disqualification action), it is currently possible to cite the conviction as part of the evidence of misconduct. However, even if the conviction is drawn to the

court's attention, as Section 9 and Schedule 1 of the CDDA are currently drafted[1], the court would not be bound to take it into account in determining whether that individual is unfit to be concerned in the management of a limited company or, indeed, the tariff of any disqualification imposed.

14. Furthermore, any action taken against such an individual would have to be "after the event", i.e. after the individual had caused harm to the market in the UK.

15. Stakeholders have made clear that they would support action to strengthen our disqualification regime to prevent directors who have been found unfit overseas being able to act as directors of UK companies. The power already exists in Part 40 of the Companies Act 2006 to recognise disqualification proceedings in other countries. However most other countries do not have disqualification regimes and that, therefore, could usefully be supplemented. Separately, research has been commissioned to look into disqualification regimes overseas and how the power in Part 40 could be used.

Option 1: Include overseas convictions and conduct explicitly as a factor to be taken into consideration by the court when determining unfitness within the proposed new iteration of Section 9 and Schedule 1 CDDA, comprising a broader outline of public interest factors to be taken into consideration (non-regulatory)

16. Although, generally, the view is that the current legislation is broadly fit for purpose, stakeholders would like to see more - and particularly more high profile use of the disqualification powers. There has been some recognition that the schedule of the matters on which disqualification action can be taken is outdated and whilst adding to it is not widely supported, a simpler rewrite with a new emphasis on, for example, track record would be popular (noting the view that previous possible misconduct should be taken into account, but perhaps not simple failure). It is already proposed that such a re-write will makes specific reference to breaches of legislation, both domestic and overseas.

17. Although such a re-write will render it explicit that the court must take any overseas conviction into account when determining whether an individual is unfit to be concerned in the management of a company, as with the "do nothing" option, such action will be, necessarily "after the event" and will not assist in preventing the individual from causing harm in the first place – even though it might be widely anticipated that this is his or her intention in coming to the UK. However by having conduct in respect of overseas companies specifically highlighted in legislation, as the basis for disqualification action may serve as a possible deterrent to a director exhibiting such behaviour.

Costs and benefits of Option 1

Costs to the public sector

18. Additional resource costs to the Insolvency Service to produce the guidance are expected to be negligible as they will be incurred as part of the business as usual operation of the Insolvency Service. The new guidance will be publicised using the Insolvency Service's current channels, that is IP guidance material and changes to disqualification guidance on their website. The additional costs of these are also likely to be negligible as changes and updates are part of its 'business as usual' resourcing.

19. Familiarisation costs to the judiciary are unknown but they are also expected to be negligible given the fact that judges are used to considering new published guidance on a regular basis and as their business as usual duties.

20. One might expect some familiarisation costs to the Insolvency Service and courts; however these are expected to be negligible. The proposed changes only extend current provisions, well known to both the Insolvency Service staff and judges, so no formal training will be required. The Insolvency Service's internal guidance material (the Enforcement Investigation Guide) will need to be updated, however it is a continuous process and should not be interpreted in terms of regulatory cost.

Costs to the private sector

21. Costs to businesses are considered to be familiarisation costs incurred by IPs[2] and lawyers to ensure they are up to date with the guidance.

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[1] Please also see separate policy proposals for amending Section 9 and Schedule 1 CDDA

[2] Insolvency Practitioners (IPs) are professionals (usually either accountants, lawyers or those who hold professional qualifications relating to the insolvency regime) who are licensed, principally by their own "recognised" professional bodies to act as liquidators, administrators, administrative receivers and managers etc., when a company enters into any form of insolvency proceedings.

22. Costs to IPs are estimated to be £760k. We would anticipate familiarisation taking up to 1 to 2 hours of an IP's time based on the assumption that this change is not complex to understand and would only need to be understood once. There are currently 1,352 IPs who take case appointments and we have assumed an average hourly rate for an IP of £375 per hour. This is based on the average hourly charge out of an IP firm, at director/partner level.[3] Based on these figures, we would expect familiarisation costs to IPs to be in a range of £507k to £1.014m, with a mid point of £760.5k.

23. Familiarisation costs to lawyers are similarly expected to result from 1 to 2 hours spent in reading the new guidance. Whilst no hard data is available, officials from the Insolvency Service who deal with disqualification cases and lawyers instructed by directors, estimate that a third of defendants to proceedings under section 6 CDDA and all defendants to proceedings under section 8 CDDA seek legal advice[4], with a range of 1 lawyer per 1 to 2 disqualified directors. Including all lawyers instructed with respect to such proceedings by the Insolvency Service gives a range of 210 to 375 lawyers who might want to familiarise themselves with the new guidance. Guidelines for the judiciary indicate that legal professionals can charge between £146 and £409 per hour[5] depending on their grade and location. The opportunity cost therefore ranges from (210 lawyers x £146 x 1hrs to 375 lawyers x £409 x 2hrs), £30.7k to £306.8k with a mid point of £168.7k.

24. In general costs to IPs and lawyers will fall within their continuous professional development, as they will have to be aware of developments in regulations as part of their job. However, these are still considered additional costs in this impact assessment as the time spent on understanding new guidance could otherwise be spent on other professional activities (including other types of continuous professional development).

25. **Overall one off cost from this option is therefore expected to be £538k to £1.32m with a mid point of £929k.**

On going costs

26. It is not expected that the proposal will increase the number of cases that are in scope for an investigation from the Insolvency Service, as the same grounds of 'public interest' will still determine what constitutes misconduct and what doesn't. Therefore no on going costs are expected from this proposal either to the public or the private sector.

27. No other non-monetised costs are expected from this proposal.

28. It is not expected that the proposal will impose any additional costs on compliant directors (even ones convicted abroad) or their businesses, because changes in Section 9 and Schedule 1 CDDA could be practically applied only "after the event" - director's engagement in misconduct in the UK.

Benefits

29. No transitional benefits are expected from this proposal.

On going Benefits

30. This proposal will give more grounds to the Court to make a disqualification, increasing the chances that a director who has engaged in misconduct and has been convicted aboard will be disqualified. Having the possibility to do this is likely to increase public confidence in the enforcement regime.

31. This option is not likely to fully address the problem, because disqualification proceedings might be pursued only "after the event" and will not assist in preventing the individual from causing harm in the first place – even though it might be widely anticipated that this is his or her intention in coming to the UK.

Option 2: Allow the Secretary of State to bring civil disqualification proceedings against any director who has been convicted overseas of a serious offence in connection with the promotion, formation or management of a company – (Preferred Option in conjunction with Option 1)

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[3] See para 3.1 http://www.bis.gov.uk/insolvency/insolvency-profession/review-of-ip-fees

[4] The remainder choosing to undertake or to fight the proceedings without reference to legal advice

[5] https://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guideline-hourly-rates-2010-v2.pdf

32. It is inconsistent that the Secretary of State can take steps under Section 2 of the CDDA to protect the market from the future activities of an individual who has been convicted in the UK of a serious offence in relation to a company but cannot do so where that individual was convicted overseas.

33. Although it is already proposed that, pursuant to a re-stated Section 9 and Schedule 1 of the CDDA, a serious overseas conviction will be a matter the court must take into account in determining whether an individual is fit to be concerned in the management of a company, this is a reactive measure that will only address cases where the convicted individual has re-located to the UK and gone on to (further) harm – it does not prevent him from causing such harm in the first place.

34. Amending the CDDA to allow the Secretary of State to bring civil disqualification proceedings against any director who has been convicted overseas of a serious offence in connection with the promotion, formation or management of a company will both address the current inconsistency and enable proactive action to be taken to prevent such an individual from using a UK registered company as a vehicle for causing further harm.

35. Even thought there is little data on the extent of the problem, anecdotal or otherwise (from informal enquiries of both Companies House staff and Insolvency Service staff, there were very few recollections of enquiries regarding overseas directors and them setting up operations in the UK), this is more of a preventative measure and wishing to close a current lacuna in the law. By allowing for disqualification action to be taken against an individual with a serious overseas conviction in relation to a company, this measure intends to protect the UK market from the potential actions of that individual by restricting his involvement in the UK market and making it clear that such action would not be tolerated here.

Costs and benefits of Option 2

Costs to the public sector

36. Costs to the public sector are estimated to be mainly resource costs to the Insolvency Service for taking any disqualification action where appropriate, producing the guidance and publicising it, and familiarisation costs to the judiciary.

37. No data is available on the cost of a disqualification application based on an overseas foreign conviction. Even as a comparison for disqualification following a UK conviction, there is no available data that is recorded or reasonably accurately known with any confidence. However as stated we do not expect to take forward many disqualification applications following an overseas conviction, with the measure being more of a preventative measure. The Insolvency Service's internal guidance material (the Enforcement Investigation Guide) will need to be updated, however it is a continuous process and should not be interpreted in terms of regulatory cost. The cost of updating the guidance should be negligible.

38. Familiarisation costs to the judiciary are unknown but they are also expected to be negligible given the fact that judges are used to considering updated legislation and published guidance on a regular basis and as their business as usual duties.

39. One might expect some familiarisation costs to the courts, however these are expected to be negligible as very few cases, if any, are expected to be taken to court.

Costs to the private sector

40. Costs to businesses are considered to be familiarisation costs incurred by IPs[6] and lawyers to ensure they are up to date with the new legislation and associated guidance.

41. Costs to IPs are estimated to be £760k. We would anticipate familiarisation taking up to 1 to 2 hours of an IP's time based on the assumption that this change is not complex to understand and would only need to be understood once. There are currently 1,352 IPs who take case appointments and we have assumed an average hourly rate for an IP of £375 per hour. This is based on the average hourly charge out of an IP firm, at director/partner level.[7] Based on these figures, we would expect familiarisation costs to IPs to be in a range of £507k to £1.014m, with a mid point of £760.5k.

[6] Insolvency Practitioners (IPs) are professionals (usually either accountants, lawyers or those who hold professional qualifications relating to the insolvency regime) who are licensed, principally by their own "recognised" professional bodies to act as liquidators, administrators, administrative receivers and managers etc., when a company enters into any form of insolvency proceedings.

[7] See para 3.1 http://www.bis.gov.uk/insolvency/insolvency-profession/review-of-ip-fees

42. Familiarisation costs to lawyers are similarly expected to result from 1 to 2 hours spent in reading the new legislation and guidance. Whilst no hard data is available, officials from the Insolvency Service who deal with disqualification cases and lawyers instructed by directors, estimate that a third of defendants to proceedings under section 6 CDDA and all defendants to proceedings under section 8 CDDA seek legal advice[8], with a range of 1 lawyer per 1 to 2 disqualified directors. Including all lawyers instructed with respect to such proceedings by the Insolvency Service gives a range of 210 to 375 lawyers who might want to familiarise themselves with the new guidance and laws. Guidelines for the judiciary indicate that legal professionals can charge between £146 and £409 per hour[9] depending on their grade and location. The opportunity cost therefore ranges from (210 lawyers x £146 x 1hrs to 375 lawyers x £409 x 2hrs), £30.7k to £306.8k with a mid point of £168.7k.

43. In general costs to IPs and lawyers will fall within their continuous professional development, as they will have to be aware of developments in regulations as part of their job. However, these are still considered additional costs in this impact assessment as the time spent on understanding new legislation and guidance could otherwise be spent on other professional activities (including other types of continuous professional development).

44. **Overall one off cost from this option is therefore expected to be £538k to £1.32m with a mid point of £929k.**

Non monetised costs

45. As mentioned previously, from what information we have been able to obtain, we do not expect many disqualification applications, with the measure being more preventative, to stop those with serious overseas convictions for company offences from coming to the UK to carry out the same or similar behaviour.

46. There could be a cost to directors convicted abroad, who are now operating in a compliant way in the UK, who could potentially now be disqualified and costs to the businesses, from removing and replacing the director convicted overseas. However the intention is that the proposed legislative change will only be on account of serious foreign convictions after the legislation comes into effect and will not be retrospective.

47. People applying for a directorship might incur costs related to familiarisation. This might also put them off from becoming directors in the UK only for those cases where the director is convicted abroad. However this is the intended effect of the policy. It aims to protect the UK market from the potential actions of individuals with serious overseas corporate convictions by making it clear that such action would not be tolerated here. Directors or potential directors should be aware of their duties and responsibilities prior to becoming a director and therefore this measure isn't expected to increase those costs.

Benefits

48. As mentioned above, it is very difficult, due to the lack of formal evidence, to estimate the number of disqualification cases that will be taken forward based on serious overseas corporate convictions. However, for illustrative purposes, we have undertaken a 'break even' analysis to estimate the number of disqualifications which would be required to be brought in order to justify the one-off familiarisation costs to IPs and lawyers contained within this proposal.

49. The main impact of taking disqualification action against company directors is the protection of future creditors from that director engaging in further misconduct. The calculations below show the negative impact upon creditors that will be prevented if additional directors are disqualified.

50. The main benefit of taking disqualification action is to prevent a director from being in a position to commit further unfit conduct. It therefore prevents a forced transfer of resources from creditors and others to the director, resulting from a breach of their obligations under the Companies Act. Because the benefit of this transfer to the director would occur as a result of a regulatory breach, we do not consider it in this analysis and the result of preventing the transfer is therefore a net benefit.

51. When a company fails, the debt left in the company is money that would otherwise be with the company's creditors. The money due to the creditors has been appropriated elsewhere, due to the misconduct of the director.

[8] The remainder choosing to undertake or to fight the proceedings without reference to legal advice

[9] https://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guideline-hourly-rates-2010-v2.pdf

52. In 1999, the NAO undertook a study which quantified the benefits from disqualifying unfit directors[10]. The monetisation of benefits was based on the average debt left in failed companies where there was unfit conduct by directors and the percentage of directors of failed companies who were likely to be involved in a further company failure. The monetisation of impacts explained below is based on this methodology, although internal data from the Insolvency Service has refined and updated the NAO data in respect of average deficiency, which due to changing economic and credit conditions is estimated to be much greater than in the NAO study.

53. According to this internal data from the Insolvency Service, in 2012-13, the average deficiency in failed companies where one or more directors have been disqualified was **£1.5m[11]** and the estimated probability of subsequent business failure[12] (during a period of disqualification of average length (5.5 years), if that director had not been disqualified) is **7%.** The average benefit of a disqualification is therefore around £100k (£1.5m*0.07).

54. The one off costs identified (familiarisation costs to IPs and lawyers) are estimated to be between £538k and £1.32M, with a mid point of £929k. Therefore to cover these costs, over a 10 year appraisal period, the number of disqualifications, based on serious overseas convictions, required to neutralise the (net) familiarisation costs identified has been estimated to be:

    (a) 15 disqualifications over 10 years for the upper level of the familiarisation costs (£1.32m).

    (b) 11 disqualifications over 10 years for the mid point of the familiarisation costs (£929k).

    (c) 6 disqualifications over 10 years for the lower level of the familiarisation costs (£538k).

55. However, we do not expect many disqualification applications based on overseas convictions. This is due to informal soundings obtained from Companies House and Insolvency Service staff that very few queries have been received regarding the actions of overseas directors, and their subsequent operations in the UK. This measure is more a preventative measure, and we have therefore not quantified any monetised benefits from this proposal.

Wider (unquantified) benefit

56. Additional benefits might be expected due to a deterrent effect: discouraging directors with serious overseas convictions from coming to the UK and undertaking further misconduct. As mentioned previously this measure is about prevention, as potential directors of UK companies with serious overseas convictions will know that they will be stopped from operating UK companies and exhibiting the same behaviour in the UK as they carried out overseas.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);

57. This is considered to be a **low-risk, low- impact intervention** and therefore the analysis undertaken has mainly focused on identifying the groups affected, describing the impacts and where possible quantifying the effect rather than trying to monetise all costs and benefits. Monetisation of impacts has only been done when data was readily available. Where none has been available, quantification has been presented as an indicative breakdown to justify the (net) quantified, one off costs of the proposal.

58. The main data constraint in this impact assessment related to the likely number of per annum disqualification applications following an overseas conviction of a potential UK director. Hard data has been almost impossible to find on the potential number of individuals with overseas convictions who might wish to operate a company in the UK, but anecdotally we expect it to be very low. Therefore, the impact of bringing additional proceedings against such individuals has been presented illustratively for Option 2.

Risks and assumptions:

59. It is considered that the risk that option 2, the preferred option, will not deliver the desired benefits will be negligible as the key to this option is the clarity it will deliver as to the effect of an individual with an overseas conviction for a corporate offence being liable to disqualification action. If such an individual's behaviour is deemed a threat to the UK market, then the SoS can apply for a disqualification order based on the overseas conviction, thereby protecting the market before the

[10] http://www.official-documents.gov.uk/document/hc9899/hc04/0424/0424.pdf

[11] The original NAO calculation used a much lower figure but economic and credit conditions have changed – deficiencies are now greater

[12] Based on a calculation developed as part of the NAO methodology

individual could cause harm. The main risk relates to obtaining information about an individual with a foreign corporate conviction as there is no central register containing such information. Intelligence would be needed to obtain this information, be it from other Government regulators, media reports, other businesses or private individuals. Analytical assumptions have already been covered in the relevant sections.

Direct costs and benefits to business calculations (following OITO methodology);

60. The preferred option will not impose any new regulatory burdens on businesses. The only businesses that might be affected from the proposals are IPs and lawyers. Neither of these groups will be imposed with any new regulatory burden they will have to comply with. They might want to familiarise themselves with the proposals, and we have included this cost in the IA, but this would be on a voluntary basis and will NOT be associated with any new regulatory burden on their profession. In addition, any familiarisation costs to business are indirect and therefore out of scope of OITO as stated in the Better Regulation Framework Manual[13].

61. On this basis, this proposal is considered to be **outside of the scope of OITO**.

Wider impacts

62. Specific Impact Tests:

    a. Competition Assessment – the proposed policy will have no impact on competition as the legislative change represents a protection for the market from the potential actions of an individual with an overseas corporate conviction.

    b. Small Firms Impact Test – there will be familiarisation costs for legal and other professional advisors dealing, together with insolvency practitioners. Some of these will be represented by small firms. However, it is anticipated that any such familiarisation costs will be negligible.

    c. Justice - The proposed policy will have no impact on Legal Aid, as it is not available to fund defended disqualification proceedings. As the number of disqualifications expected under this proposal is expected to be minimal, any other effect will be marginal.

    d. Sustainable Development - The proposed policy will have no direct impact on sustainable development.

    e. Greenhouse Gas assessment - The proposed policy will have no direct impact on greenhouse gas assessments.

    f. Other Environment - The proposed policy will have no direct impact on other environmental factors.

    g. Health – The proposed policy will have no direct impact on health.

    h. Equality Impact Assessments - The proposed policy will not have an adverse or disproportionate effect on any person as a consequence of race, ethnic origin, religion, gender or sexual orientation.

    i. Human Rights – The proposed policy will have no impact on any human rights issues as the legislative change will only be on account of foreign convictions after the legislation comes into effect. If a disqualification application is subsequently made, then the individual will have the right to defend themselves.

    j. Rural Proofing - The proposed policy will have no direct impact on Rural Proofing.

Summary and preferred option with description of implementation plan

63. Although the Secretary of State can make an application for an individual to be disqualified in cases where that individual has been convicted of an indictable offence in the UK, if the offence was overseas, he cannot make such a disqualification application – even if it is the case that the individual has re-located to the UK, presenting a strong possibility that he or she intends to resume their activities over here, which, in turn, represents a risk to the UK market. Under the current legislation, such an individual cannot be prevented from incorporating a UK company and being appointed as a director thereof. Action may only be taken if and when that individual causes harm.

[13] See page 40: www.gov.uk/government/uploads/system/uploads/attachment_data/file/211981/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf

64. The preferred option is to legislate to remove this lacuna and allow the Secretary of State to bring a disqualification application where an individual has been convicted overseas of a serious corporate offence. This could protect the UK market before any potential harm has occurred.

65. It is therefore intended to legislate as soon as parliamentary time allows amending the CDDA to allow the Secretary of State to bring a disqualification application where an individual has been convicted of a serious offence in connection with the promotion, formation or management of a company.